

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Closed Captioning of Internet Protocol-Delivered	)	
Video Programming: Implementation of the	)	MB Docket No. 11-154
Twenty-First Century Communications and Video	)	
Accessibility Act of 2010	)	
	)	

**REPLY COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION STATIONS  
AND THE PUBLIC BROADCASTING SERVICE**

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The Association of Public Television Stations (“APTS”)<sup>1</sup> and the Public Broadcasting Service (“PBS”)<sup>2</sup> hereby submit these reply comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) implementing regulations to mandate closed captioning on certain video programming delivered using Internet protocol (“IP”), as required by the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).

**EXECUTIVE SUMMARY**

APTS and PBS share the concern of the Commission and the other commenters in this proceeding that all Americans, including those who are deaf or hard of hearing, have access to broadcast television programming. Built on the principle of universal service, the nation’s public television system has led the television industry in ensuring that persons with disabilities have access to a diverse range of high-quality video programming services. APTS, PBS, and our over

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<sup>1</sup> APTS is a non-profit organization whose membership comprises the licensees of nearly all the nation’s CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

<sup>2</sup> PBS, with its nearly 360 member stations, offers all Americans — from every walk of life — the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches 124 million people through television and 20 million people online, inviting them to experience the worlds of science, history, nature, and public affairs; to hear diverse viewpoints; and to take front row seats to world-class drama and performances.

350 member stations have long been committed to expanding the captioning of IP-delivered video programming. For instance, PBS designed its online video distribution system to support closed captioning, and approximately a quarter of all content that is posted online through this system, including some station-produced programming, is captioned today.

At the same time, this experience has taught us that captioning IP-delivered video programming presents a number of technical and operational challenges that are unique to the online environment. These challenges can be particularly acute for local public television stations, which are under serious financial stress resulting from cutbacks in state and local funding sources and reduced availability of corporate underwriting due to the difficult economic conditions in their markets.

Consequently, APTS and PBS encourage the Commission to adopt rules that expand access to IP-delivered video programming while avoiding unnecessary technical burdens and costs that could inhibit local public television stations' ability to continue offering a dynamic lineup of online video programming. Specifically, APTS and PBS support the commenters in this proceeding that request that the Commission: (1) distinguish between video programming providers and video programming distributors; (2) interpret "video programming" to include only full-length programming (although greater clarity on how the captioning requirements apply to full-length foreign and certain re-aired content would be helpful); (3) adopt a requirement that captions for IP-delivered video programming be "functionally equivalent" to captions shown on television; (4) adopt a single standard as the interchange format for captioning of IP-delivered video programming; and (5) provide all regulated entities at least two years after the effective date of the rules to come into compliance with the CVAA's captioning requirements.

**I. APTS AND PBS AGREE WITH MICROSOFT THAT THE COMMISSION SHOULD DISTINGUISH BETWEEN VIDEO PROGRAMMING PROVIDERS AND VIDEO PROGRAMMING DISTRIBUTORS.**

APTS and PBS fully support the Commission’s proposal to require the person or entity that owns the copyright in the video programming — i.e., the video programming owner (“VPO”) — to send program files to the video programming provider (“VPP”) and video programming distributor (“VPD”) that include either the required captions or a certification explaining why captions are not required.

However, APTS and PBS agree with Microsoft that, because multiple entities with different roles often are involved in the online video distribution chain, there are practical reasons to impose different obligations on VPPs and VPDs.<sup>3</sup> For example, PBS has different contractual obligations and relationships with viewers when it: (i) distributes programming produced for public television to its member stations for broadcast or IP delivery; (ii) provides programming directly to viewers on its website; and (iii) arranges for the delivery of public television programming through online video services, such as the Apple iTunes Store, Amazon Instant Video, and Netflix.

To more closely tailor the captioning responsibilities with the entity’s degree of involvement and control, we request that the Commission define “VPP” to include entities that make IP-delivered video programming directly available to the end user, including, for example, the operator of the website or online service through which end users access the video programming. VPPs would be responsible for including the captions provided by the VPO at the time they make the program file available to end users and for maintaining any certifications provided by the VPO. The remaining entities in the video distribution chain, other than the

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<sup>3</sup> Comments of Microsoft Corporation, at 6.

VPO, would be deemed “VPDs.” Because VPDs are passive actors with no direct viewer relationship, VPDs would be required only to pass through and to not degrade or block any captioning they receive. This approach ensures that the captions provided by the VPO are delivered to the VPP without any degradation in quality, without imposing unnecessary burdens on the VPD.

**II. THE RECORD SUPPORTS THE CONCLUSION THAT ONLY FULL-LENGTH PROGRAMMING MUST BE CAPTIONED, BUT GREATER CLARITY REGARDING CERTAIN FULL-LENGTH FOREIGN AND RE-AIRED CONTENT IS DESIRABLE.**

APTS and PBS join the National Association of Broadcasters (“NAB”) in supporting the Commission’s conclusion that the CVAA’s captioning requirements for IP-delivered video programming apply only to full-length programming, and not to video clips. However, we believe that the industry would benefit from a more thorough description of how the closed captioning requirements apply in the context of certain full-length foreign and re-aired content. In considering this matter, we ask that the Commission take into account the unique impact these requirements could have on locally owned and operated public television stations.

**A. APTS and PBS Join the NAB in Supporting the Commission’s Decision To Impose Captioning Requirements on Full-Length Programming, and Not Video Clips.**

Absent substantial improvements in existing technology, APTS and PBS agree with the NAB’s observation that “there would be substantial production costs and delays associated with any requirement to caption an excerpt of a full-length program.”<sup>4</sup> Video clips currently must be separately captioned, even if the clip is taken from a full-length program that has been captioned for IP distribution. For example, for PBS LearningMedia (“PBSLM”) — which is a free online service that makes public media digital content and resources (including video clips, lesson

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<sup>4</sup> Comments of the National Association of Broadcasters, at 12.

plans, photos, audio, and interactive programs) available for teachers to use in the classroom<sup>5</sup> — PBS would need to either build additional functionality into the PBSLM content management system to allow video files to be paired with related closed caption files or manually generate new closed caption files for the more than 7,000 clips in the collection. Either approach would require significant resources and could delay or inhibit the overall project.

We therefore encourage the Commission to apply the captioning requirements only to full-length video programming. However, if there is clear evidence that an entity has developed a pattern of attempting to use video clips to evade its captioning obligations, either by delivering entire full-length programs through multiple, uncaptioned video clips or by consistently posting video clips with only a *de minimis* portion of the program removed, we appreciate that the closed captioning rules should apply.

**B. Greater Specificity Regarding the Captioning Requirements for Full-Length Foreign Programming Would Provide Needed Certainty.**

APTS and PBS join the NAB, Microsoft, and the National Cable and Telecommunications Association in supporting the Commission's tentative decision that IP-delivered video programming that is not published or exhibited on television in the United States after the effective date of the regulations need not be captioned.<sup>6</sup> While this approach helps alleviate many of the burdens associated with full-length, IP-delivered foreign programming, it remains unclear who bears the responsibility to caption foreign programming that is aired on broadcast television and offered online after the Commission's rules take effect.

This issue could have a significant impact on local public television stations, some of which directly acquire the rights to broadcast content produced abroad, such as content owned by

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<sup>5</sup> See <http://www.pbslearningmedia.org/>.

<sup>6</sup> See Comments of the National Association of Broadcasters, at 12–13; Comments of Microsoft Corporation, at 3; Comments of the National Cable and Telecommunications Association, at 18–21.

the BBC. It is unclear whether these foreign VPOs, by deciding to make their programming available in the United States, are subject to the Commission's captioning rules. As a result, it is possible that the programming files received by the local public television station may not contain the necessary captioning. To avoid risking liability, local public television stations may be forced to bear the cost of captioning foreign programming in practice. We do not believe the Commission intended this result, which discourages stations from offering online foreign programming that is broadcast on television after the effective date of the rules. We therefore encourage the Commission to clarify the responsibilities for captioning such video programming, taking into consideration the effect these requirements might have on local public television stations.

**C. In the Short Term, Video Programming That Is Re-Aired After the Rule's Effective Date Will Present Unique Challenges for the Public Television Ecosystem.**

Unlike the Motion Picture Association of America, APTS and PBS believe that exempting all content that is posted online prior to the effective date of the new rules goes too far. This is because commercial entities typically can recoup the costs of captioning this content for IP distribution through the advertising included in the video programming that is re-aired on broadcast television.

At least in the short term, however, captioning IP-delivered video programming that is posted online before the effective date of the rules and that is re-broadcast after such date presents unique challenges for local public television stations. Under the current distribution agreements for many public television programs, local public television stations are granted the right to re-air the video programming for several years after the station first airs the programming on broadcast television, without having to provide any notice to PBS or the VPO. Consequently, for the first few years that the rules are in effect, the decision of a single local



public television station to re-air a video program could trigger captioning obligations for the VPO and all of the other VPPs and VPDs offering the program online.

Not only would these entities not have any notice that a particular program has been re-aired, but the VPO also would not have any funding source to cover the costs of captioning the video programming for online distribution because the budget for this content would not have accounted for captioning requirements that did not exist when the content was produced. While the NPRM does not definitively conclude whether a VPD or VPP would be responsible in the event the VPO fails to caption such programming, at a minimum the local public television station could be required to bear significant financial, administrative, and reputational costs in responding to related closed captioning complaints. To avoid these costs, stations would need to either caption the video programming themselves or remove the content from their online libraries. For many stations, the latter approach would be the only realistic alternative given current financial constraints.

### **III. APTS AND PBS AGREE WITH THE MANY COMMENTERS WHO RECOMMEND A “FUNCTIONALLY EQUIVALENT” QUALITY STANDARD.**

APTS and PBS appreciate the Commission’s goal of ensuring that captions of IP-delivered video programming are of at least the same quality as captions shown on television; however, we believe that in practice this standard ignores important technical differences between the broadcast television and IP environments. Accordingly, we agree with the Consumer Electronics Association, Microsoft, AT&T, Digital Media Association, and others that the Commission should adopt instead a standard that requires captions for IP-delivered video programming to be “functionally equivalent” to captions shown on television.<sup>7</sup>

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<sup>7</sup> See, e.g., Comments of the Consumer Electronics Association, at 4–5; Comments of Microsoft Corporation, at 13; Comments of AT&T, at 10–11; Comments of Digital Media Association, at 10.

This “functionally equivalent” standard is a better approach for at least three reasons. *First*, existing online video players do not currently include all of the features available for broadcast television, such as dynamic changes in caption placement. It is not clear whether this technology can be developed and implemented before the first proposed deadline. *Second*, even if new technology can be quickly deployed, the numerous Part 15 captioning requirements that were developed for the relatively straightforward system of broadcast television, with its well-established and limited distribution technologies and receivers, cannot be automatically replicated in the much more challenging and diverse IP world with its myriad distribution mechanisms and receivers that come in a vast array of shapes and sizes.<sup>8</sup> *Third*, the timing of IP-delivered captions can be affected by variations in users’ broadband connection speeds. The public interest is not served by holding VPOs, VPPs, and VPDs liable for circumstances like these that are outside their control. Accordingly, we believe that a “functionally equivalent” standard can provide the flexibility necessary to account for important technical differences, while still ensuring that the needs of the deaf or hard of hearing are met.

#### **IV. APTS AND PBS SUPPORT THE NAB’S PROPOSAL TO ADOPT SMPTE-TT AS THE STANDARD INTERCHANGE FORMAT FOR THE CAPTIONING OF IP-DELIVERED VIDEO PROGRAMMING.**

APTS and PBS support the NAB’s proposal to adopt the Society of Motion Picture and Television Engineers Timed Text (“SMPTE-TT”) standard as the interchange format for captioning IP-delivered video programming or, in the alternative, to designate SMPTE-TT as a safe harbor.<sup>9</sup> APTS and PBS agree with the NAB and a number of other commenters that the video programming market would greatly benefit from the certainty provided by a single interchange format. Like the Commission, we are hopeful that industry consensus on a single

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<sup>8</sup> See 47 C.F.R. §§ 15.119, 15.122.

<sup>9</sup> See Comments of the National Association of Broadcasters, at 30–31.

standard can be reached in a short period of time. However, consensus is not guaranteed, and is likely to take at least a number of months to materialize.<sup>10</sup>

We favor the SMPTE-TT standard because it allows for a simple translation from television broadcast 608/708 captions to the IP environment. PBS's online video streaming system currently supports the SAMI and DXFP formats. While PBS recognizes that it will need to update its system to implement SMPTE-TT, PBS understandably cannot do so unless and until it is confident that its adoption of this standard will fulfill the new captioning requirements.<sup>11</sup>

**V. APTS AND PBS AGREE WITH DIRECTV THAT A TWO-YEAR DEADLINE FOR ALL SECTION 202(b) CAPTIONING REQUIREMENTS IS APPROPRIATE.**

APTS and PBS support DirecTV's request for a two-year deadline for complying with all of the Section 202(b) captioning requirements. This approach has several advantages over the proposed schedule of deadlines.

First, this approach helps avoid confusing consumers and encouraging groundless captioning complaints. Under the proposed schedule of deadlines, VPOs, VPDs, and VPPs would have six to eighteen months to come into compliance, while device manufacturers potentially would have up to two years to design and build devices that comply with the captioning requirements contained in Section 203 of the CVAA. Until the two-year deadline has passed, a number of unwarranted captioning complaints could be filed by consumers, who will have no straightforward way of determining whether the IP-delivered programming lacks captioning because a rule has been violated or because another relevant rule has not yet taken

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<sup>10</sup> The risk of delay may be even greater for downloadable content, for which the interchange and delivery formats are less developed.

<sup>11</sup> We understand that the Commission does not intend to require VPOs, VPPs, and VPDs to support many different standards; however, it is worth emphasizing that such a result would create unnecessary redundancies at a significant logistical and financial cost. These costs could discourage local public television stations from offering much of their video programming online.

effect. A two-year timeframe for all categories of video programming and devices helps avoid this confusion, since all the requirements would take effect at the same time.

Second, assuming that industry can quickly reach consensus on a single interchange standard (which is not assured), entities that currently use other formats will need time to implement the consensus standard. A two-year deadline allows sufficient time for this transition and promotes competition by preventing any single group of entities from gaining a market advantage while others bring their video programming distribution systems into compliance.

Third, a two-year deadline enables industry to improve and implement technology for the captioning of live video programming delivered using IP. Captioning for live video programming is not widely supported by online streaming services today. Consistent with public television's mission to create content that educates, informs, and inspires, PBS and local public television stations hope to continue offering, for example, live streams of political debates and election night coverage on its website. A two-year deadline for all categories of IP-delivered video programming will help ensure that the technology to caption this programming is widely implemented.

Fourth, additional time will enable public television programming producers to account for the new closed captioning requirements in their production budgets and contractual agreements. Production cycles for programming often span three years or longer, and the budgets for public television programs typically are finalized far in advance of the program's broadcast date. Consequently, producers of programming that is in the pipeline, but that will not air on television until after the new rules take effect, have no money budgeted to cover the costs of captioning the programming for online distribution. A two-year deadline helps address this

issue and allows producers to account for the new rules in production budgets and contractual agreements moving forward.

### **CONCLUSION**

APTS and PBS strongly support the goal of this proceeding to maximize the amount of captioned IP-delivered video programming available to the public. At the same time, the record demonstrates that captioning such programming presents a number of technical and administrative challenges. As the Commission works to finalize its rules, APTS and PBS ask that the Commission ensure that the new rules expand access to captioning while taking into consideration the issues raised above. APTS and PBS have long led the industry in the development and implementation of closed captioning technology and plan to continue doing so by expanding access to IP-delivered video programming as expeditiously as possible.

Respectfully submitted,

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